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**ARIZONA LEAFY GREEN PRODUCTS SHIPPER  
MARKETING AGREEMENT**

**ARTICLE I**

**BACKGROUND AND PURPOSE**

The general purpose of this Marketing Agreement is to enable shippers of leafy green products to engage in mutual help and continue the production of high quality leafy green products grown in this State. The primary purpose of this Marketing Agreement is to authorize signatory shippers to certify safe handling, shipment and sale of leafy green products to consumers by adopting leafy green best practices and by using an official mark. The Marketing Agreement will permit the advertisement and promotion of the use of the official mark and the education of consumers about the meaning of the official mark.

**ARTICLE II**

**AUTHORITY AND APPLICATION**

A.R.S. Title 3, Chapter 3, Article 1 provides for marketing agreements. This Marketing Agreement shall apply only to signatory shippers who grow or handle leafy green products in the State of Arizona.

**ARTICLE III**

**DEFINITIONS**

In addition to the definitions prescribed at A.R.S. § 3-401, for the purposes of this Marketing Agreement:

1. “Act” means Arizona Revised Statutes, Title 3, Chapter 3, Article 1.
2. “Best practices” means the commodity specific leafy green best practices document adopted by the Marketing Committee.
3. “Department” means the Arizona Department of Agriculture.
4. “Fiscal year” means the period beginning July 1 of any year and extending through June 30 of the following year.
5. “Inspector” means a state or federal agricultural regulatory agency or their designee(s), or a private entity contracted by the Marketing Committee to perform inspections authorized by the Act.

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6. "Leafy green products" means iceberg lettuce, romaine lettuce, green leaf lettuce, red leaf lettuce, butter lettuce, baby leaf lettuce (i.e., immature lettuce or leafy greens), escarole, endive, spring mix, spinach, cabbage, kale, arugula and chard.

7. "Official mark" means the mark established by the Marketing Committee and authorized for use by those signatory shippers who verify that their leafy green products have been grown, packed, shipped, processed and/or handled in accordance with the best practices and other Marketing Agreement requirements.

8. "Producer" means a person who has a financial interest in producing or causing leafy green products to be produced for market in commercial quantities.

9. "Records" means all books, accounts, reports, files and other records relating to the Marketing Agreement.

10. "Shipper" means a person that engages in shipping, transporting, selling or marketing leafy green products under his or her own registered trademark or label or a person who first markets the leafy green products for the producer. It does not include a retailer.

11. "Signatory shipper" means a shipper who has signed this Marketing Agreement.

## **ARTICLE IV**

### **MARKETING COMMITTEE**

#### **Section A. ESTABLISHMENT, MEMBERSHIP, AND ELECTION.**

1. A Marketing Committee of five members is established pursuant to A.R.S. § 3-426, consisting of:

a. Three members from Yuma County.

b. Two members from any leafy green producing area in this State.

2. Members shall be elected by the signatory shippers.

3. Members shall consist of representatives of signatory shippers. Only one Marketing Committee member shall be elected from each signatory shipper.

4. The term of office of the members is two years beginning from the initial qualification and election and continuing through September 30 of the calendar year that falls two years after the election or until their successors have been elected and qualified or the Marketing Agreement is terminated. Notwithstanding the two-year term requirement of this Section, the initial term of office for one member representing Yuma County and for one member representing any leafy green producing area in this State, as assigned by lots, shall be one year.

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5. The Department shall conduct the initial nomination and election of members. The Marketing Committee shall conduct subsequent elections.

6. In the event of a vacancy, the remaining members of the Marketing Committee shall select a qualified representative of a signatory shipper to fill the remainder of the term. Vacancies may occur by the failure of any person selected as a member to qualify, by the death or resignation of a member or the disqualification of a member. A member may be disqualified if the member is no longer designated as the representative of the signatory shipper or if the signatory shipper withdraws from this Marketing Agreement.

#### **Section B. DUTIES AND POWERS**

The Marketing Committee shall have the duties and powers prescribed in the Act, including without limitation A.R.S. §§ 3-414, 3-415, and 3-417.

#### **Section C. EXPENSES OF MEMBERS OF THE MARKETING COMMITTEE**

Members of the Marketing Committee may be reimbursed for expenses pursuant to A.R.S. Title 38, Chapter 4, Article 2.

#### **Section D. INDEMNIFICATION**

Each member or employee of the Marketing Committee shall be indemnified as prescribed in A.R.S. § 3-416.

### **ARTICLE V**

#### **RECORDS**

##### **Section A. RECORDS**

Signatory shippers shall maintain records reflecting their operations and permit the Department, the Marketing Committee, or their authorized representatives to inspect the records during normal business hours. Pursuant to A.R.S. § 35-214, all records shall be subject at all reasonable times to inspection and audit by the State of Arizona for five years after completion of this Marketing Agreement.

##### **Section B. CONFIDENTIAL INFORMATION**

All information concerning the businesses of individual producers and shippers, including cartons or equivalent marketed, and the dollar value of gross annual sales is not a public record and shall not be disclosed by the Marketing Committee or the Department except by court order or to a person who presents a release signed by the producer or shipper.

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## **ARTICLE VI**

### **OFFICIAL MARK**

#### **Section A. OFFICIAL MARK**

Pursuant to A.R.S. § 3-404(B)(7), the Marketing Committee may establish an official mark. Signatory shippers shall only apply the mark to leafy green products that have been grown, packed, shipped, and/or processed in accordance with the best practices and other Marketing Agreement requirements. A signatory shipper's compliance with the best practices is a condition precedent and subsequent to the signatory shipper's privilege to affix the mark to the signatory shipper's leafy green products.

#### **Section B. REQUIREMENTS FOR USE OF MARK**

The mark certifies that the leafy green products contained in the package or bin bearing the mark have been grown, packed, shipped, processed and/or handled in accordance with the best practices and other Marketing Agreement requirements and the signatory shipper:

1. Is subject to periodic inspection by an inspector and files with the Marketing Committee reports as are periodically required.
2. Maintains a trace-back system, as defined in the best practices, subject to annual process verification by an inspector and files with the Marketing Committee reports as are periodically required.
3. Buys, consigns or otherwise accepts or handles leafy green products from a producer or shipper who has:
  - a. Grown the leafy green products and managed his/her farm in accordance with the best practices and other Marketing Agreement requirements, subject to periodic inspection by an inspector, and filed with the Marketing Committee reports as required.
  - b. Maintained a trace-back system, as defined in the best practices, subject to annual process verification by an inspector, and filed with the Marketing Committee reports as required.

#### **Section C. LOSS OF THE PRIVILEGE TO USE THE MARK.**

A signatory shipper who fails to comply with the terms of this Marketing Agreement shall lose the privilege to use the mark for flagrant or repeated violations as follows:

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1. A flagrant violation occurs when the signatory shipper buys, consigns or otherwise accepts or handles a leafy green product and knows the product was grown, packed, shipped, processed or handled in violation of the best practices.
2. A repeated violation occurs when the signatory shipper violates the terms of this Marketing Agreement and has received either:
  - a. A prior written notice of violation for the same type of violation.
  - b. Prior written notices of two or more different violations of the best practices.
  - c. A prior written notice of violation for the same type of violation of record keeping requirements during the current and prior fiscal year.
  - d. Notices of violation for two or more different violations of the record keeping requirements during the current and prior fiscal year.
3. The first flagrant or a repeated violation shall result in a two-week suspension of the privilege to use the mark.
4. A flagrant or repeated violation following a two-week suspension shall result in an indefinite suspension of the privilege to use the mark until the signatory shipper has established a corrective action plan (CAP) approved by the inspector and the Marketing Committee.
5. A flagrant or repeated violation following implementation of a CAP shall result in an indefinite revocation of the privilege to use the mark. The privilege to use the mark shall not be restored to a signatory shipper for a minimum of two years unless the signatory shipper demonstrates to the satisfaction of the inspector and the Marketing Committee a significant change in management and brand.
6. The Marketing Committee may accelerate the progression of penalties under this Article if the signatory shipper's product seriously affects a person's health and the signatory shipper handled the product with intentional or reckless disregard for the signatory shipper's obligations under this Marketing Agreement.
7. Imposition of penalties under this Article shall be subject to the Uniform Administrative Hearing Procedures, A.R.S. Title 41, Chapter 6, Article 10. Before suspension or revocation of the privilege to use the mark, the Marketing Committee shall provide the signatory shipper with notice and an opportunity for a hearing. If the Marketing Committee finds that the public health, safety or welfare imperatively requires emergency action, and incorporates a finding to that effect in its order, the Marketing Committee may order summary suspension of a signatory shipper's privilege to use the mark pending proceedings for revocation or other action.

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8. In addition to suspension or revocation of the privilege to use the mark, the Marketing Committee or Department may seek any remedy or penalty authorized by this Marketing Agreement or by law.

## **ARTICLE VII**

### **COMPLIANCE WITH REQUIREMENTS**

Signatory shippers shall not handle, purchase, ship or offer for sale a leafy green product that does not comply with requirements to use the official mark.

## **ARTICLE VIII**

### **VIOLATIONS**

A signatory shipper who violates this Marketing Agreement may be subject to civil penalties as described in A.R.S. § 3-421(A). The Department or Marketing Committee may apply for a temporary restraining order or injunction against a signatory shipper who violates this Marketing Agreement, the Act, or rules adopted under the Act pursuant to A.R.S. § 3-421.

## **ARTICLE IX**

### **ADVERTISING AND SALES PROMOTION**

Pursuant to A.R.S. § 3-404(B)(2), the Marketing Committee may advertise and promote consumer recognition of the official mark and its meaning.

## **ARTICLE X**

### **QUALITY IMPROVEMENT AND EDUCATION PROGRAM**

Pursuant to A.R.S. § 3-404(B)(4)-(5), the Marketing Committee may engage in a program of educating the public and producers concerning the best practices.

## **ARTICLE XI**

### **BUDGET AND ASSESSMENTS**

#### **Section A. BUDGET**

Pursuant to A.R.S. § 3-417(D), the Marketing Committee shall establish an annual budget.

#### **Section B. ASSESSMENTS**

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1. The Marketing Committee shall set the assessment rate as prescribed in the Act.
2. The assessment shall not exceed five cents per carton or carton equivalents.
3. For the initial year of the Marketing Agreement, the Marketing Committee may collect from signatory shippers an advance deposit of up to ten per cent of the total assessments owing based on the 2006-2007 fiscal year.
4. The costs of any filing fees required by A.R.S. § 3-424(A) shall be reimbursed to the persons paying the filing fees by assessments received pursuant to this Marketing Agreement.

#### Section C. COLLECTION OF ASSESSMENTS

Signatory shippers shall pay any assessments owing to the Marketing Committee and shall not charge producers any assessments for the Marketing Agreement. The Marketing Committee may allow the Department's Supervisor of Standardization to collect assessments from signatory shippers on its behalf pursuant to A.R.S. § 3-485(B).

#### Section D. FAILURE TO PAY ASSESSMENTS

Any signatory shipper that fails to pay assessments shall be subject to the provisions of A.R.S. § 3-418.

#### Section E. DISPOSITION OF FUNDS

The Marketing Committee may dispose of funds as prescribed in A.R.S. § 3-419.

### **ARTICLE XII**

#### **PARTICIPATION**

##### Section A. NEW SIGNATORIES

After this Marketing Agreement is approved pursuant to A.R.S. § 3-425(C), shippers may become additional signatories to this Marketing Agreement upon recommendation of the Marketing Committee and the approval of the Department. The Department is not required to follow the Marketing Committee's recommendation.

##### Section B. WITHDRAWAL FROM PARTICIPATION

1. A signatory shipper may withdraw by either:
  - a. Filing a written request for withdrawal for the subsequent fiscal year with the Marketing Committee prior to June 1 of the current fiscal year.
  - b. Filing a written notice with the Marketing Committee stating that the signatory shipper ceases to be an Arizona shipper of leafy green products.

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2. The effective date of the withdrawal pursuant to this Section shall be June 30 of the current fiscal year.

3. Withdrawal from the Marketing Agreement does not suspend or terminate any obligations of, or causes of action against, the withdrawing shipper that may have accrued under the Act or the Marketing Agreement.

### **ARTICLE XIII**

#### **EFFECTIVE TIME, AMENDMENT AND TERMINATION**

##### **Section A. EFFECTIVE TIME**

This Marketing Agreement shall become effective on the date the Department approves the Marketing Agreement as prescribed by A.R.S. §§ 3-425(C) and 3-428(A).

##### **Section B. TERM**

The Marketing Agreement shall continue in effect through September 30, 2008. The Marketing Agreement shall be renewed through the following September 30, up to an additional three terms, pursuant to A.R.S. § 3-428(C) unless otherwise suspended or terminated by operation of law or as prescribed by A.R.S. § 3-428(A).

##### **Section C. AMENDMENT**

Pursuant to A.R.S. § 3-428, the Marketing Agreement may be amended at any time with the approval of the Department and all of the signatory shippers.

##### **Section D. EFFECT OF TERMINATION, SUSPENSION OR AMENDMENT**

The suspension, substantial change, or termination of this Marketing Agreement does not suspend or terminate any obligations or causes of action that have accrued under it.

### **ARTICLE XIV**

#### **SEVERABILITY**

If any provision of this Marketing Agreement or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Marketing Agreement that can be given effect without the invalid provision or application, and to this end, the provisions of this Marketing Agreement are severable.

### **ARTICLE XV**

#### **MISCELLANEOUS PROVISIONS**



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The authority and requirements prescribed in A.R.S. § 3-420 relating to an inspector holding a lot found to be in violation and time periods to recondition lots so held do not apply to the provisions of this Marketing Agreement.

## **ARTICLE XVI**

### **NON-AVAILABILITY OF FUNDS**

Every payment obligation of the Marketing Committee under this Marketing Agreement is conditioned upon the availability of funds for the payment of the obligation. If funds are not available for the continuance of this Marketing Agreement, this Marketing Agreement may be terminated by the Marketing Committee at the end of the period for which funds are available. No liability shall accrue to the Marketing Committee in the event this provision is exercised, and the State shall not be obligated or liable for any future payments or for any damages as a result of termination under this Article.

## **ARTICLE XVII**

### **CONFLICT OF INTEREST**

This Marketing Agreement is subject to cancellation pursuant to A.R.S. § 38-511.

## **ARTICLE XVIII**

### **DISPUTE RESOLUTION**

Only to the extent required pursuant to A.R.S. § 12-1518, the signatory shippers and the Marketing Committee agree to use arbitration to resolve any dispute arising under this Marketing Agreement.

## **ARTICLE XIX**

### **APPLICABLE LAW**

This Marketing Agreement shall be governed and interpreted by the laws of the State of Arizona.

By their signatures on the shipper signup form, a copy of which is attached, each signatory shipper agrees to be bound by and comply with all the provisions of this Marketing Agreement, the Act and any rules adopted by the Marketing Committee.